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6 Attorneys for Plaintiffs
BEYOND FRANCHISE GROUP, LLC and
7 BEYOND RESTAURANT GROUP, LLC

8 **IN THE UNITED STATES DISTRICT COURT**
9
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 BEYOND FRANCHISE GROUP,
12 LLC; BEYOND RESTAURANT
GROUP, LLC,

13 Plaintiffs,

14 v.

15 URBAN POKE 1, LLC; URBAN
16 POKE 2, LLC; ENY TJAHA; MING-
17 TSUNG CHI; VIENGKEO TZONG;
18 DAVID TZONG; and DOES 1 through
10, inclusive,

19 Defendants.

Case No.

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF:**

- (1) **BREACH OF FRANCHISE
AGREEMENT – TYSONS
CORNER;**
(2) **BREACH OF GUARANTY –
TYSONS CORNER;**
(3) **BREACH OF FRANCHISE
AGREEMENT – CHANTILLY;**
(4) **BREACH OF GUARANTY –
CHANTILLY;**
(5) **BREACH OF PROMISSORY
NOTE;**
(6) **ACCOUNT STATED;**
(7) **INJUNCTIVE RELIEF**

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COMES NOW Plaintiffs Beyond Franchise Group, LLC (“Beyond Franchise”) and Beyond Restaurant Group, LLC (“Beyond Restaurant”) (collectively, “Plaintiffs” or “Beyond”) by and through their attorneys, and for their Complaint against Defendants Urban Poke 1, LLC (“Urban Poke 1”); Urban Poke 2, LLC (“Urban Poke 2”);¹ Eny Tjahja; Ming-Tsung Chi; Viengkeo Tzong; and David Tzong² (collectively, “Defendants”), allege as follows:

I. INTRODUCTION

1. Plaintiff Beyond Franchise franchises the Pokéworks® restaurant concept throughout the United States and abroad.

2. Defendants owned and operated two Pokéworks® franchises in Virginia pursuant to franchise agreements with Beyond Franchise.

3. Despite the various accommodations Plaintiffs offered to Defendants, Defendants defaulted on their contractual obligations and anticipatorily repudiated their contracts, without any legal basis for doing so.

4. Although Defendants have prematurely ceased operating their businesses as Pokéworks® restaurants, they have refused to comply with post-termination obligations to de-identify their locations. As a result, they are infringing Plaintiffs’ valuable trademark rights.

5. Plaintiffs bring this action to recover the outstanding unpaid amounts owed by Defendants, as well as damages caused by Defendants’ premature termination, and to enjoin further acts of trademark infringement and unfair competition by Defendants.

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¹ “Urban Poke 1 and Urban Poke 2 are sometimes collectively referred to herein as “Franchisees.”

² Eny Tjahja; Ming-Tsung Chi; Viengkeo Tzong; and David Tzong are sometimes collectively referred to herein as “Guarantors.”

II. THE PARTIES

6. Plaintiff Beyond Franchise is a Delaware limited liability company with its principal place of business in Irvine, California.

7. Plaintiff Beyond Restaurant is a Delaware limited liability company with its principal place of business in Irvine, California.

8. On information and belief, Defendant Urban Poke 1 is a Virginia limited liability company with its principal place of business in Fairfax, Virginia.

9. On information and belief, Defendant Urban Poke 2 is a Virginia limited liability company with its principal place of business in Fairfax, Virginia.

10. On information and belief, Urban Poke 1 and Urban Poke 2 are owned and operated by Eny Tjahja, Ming-Tsung Chi, Viengkeo Tzong, and David Tzong.

11. On information and belief, Defendant Eny Tjahja is an individual residing in Haymarket, Virginia.

12. On information and belief, Defendant Ming-Tsung Chi is an individual residing in Haymarket, Virginia.

13. On information and belief, Defendant Viengkeo Tzong is an individual residing in Fairfax, Virginia.

14. On information and belief, Defendant David Tzong is an individual residing in Fairfax, Virginia.

15. Plaintiffs are unaware of the true names and capacities of defendants sued herein as DOES 1 through 10, inclusive, and, therefore, sue these defendants by such fictitious names. Plaintiffs will amend this Complaint to allege their true names and capacities when ascertained. Plaintiffs are informed and believe and therefore allege that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged, and Plaintiffs' injuries as herein alleged were proximately caused by such defendants.

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1 **III. JURISDICTION AND VENUE**

2 16. This Court has subject matter jurisdiction under 15 U.S.C. § 1121 and
3 28 U.S.C. §§ 1331 and 1338(a), in that this case arises under the trademark laws of
4 the United States, 15 U.S.C. §§ 1051, *et seq.*

5 17. This Court has pendant jurisdiction under 28 U.S.C. § 1338(b), in that
6 this case arises under claims joined with a substantial and related claim under the
7 trademark laws of the United States.

8 18. This Court has supplemental jurisdiction under 28 U.S.C. § 1367(a)
9 over all claims arising under state law, as such claims are so related to the federal
10 claims that they form part of the same case or controversy and derive from a
11 common nucleus of operative facts.

12 19. This Court has personal jurisdiction over Defendants by virtue of,
13 among other things, Section 16.14(e) of the Franchise Agreements by and between
14 Plaintiff Beyond Franchise and Defendants, described in more detail below,
15 pursuant to which Defendants expressly consented to “personal jurisdiction in the
16 State of California” and agreed that “the state and federal court(s) will have
17 exclusive jurisdiction over any such issues not subject to arbitration.”

18 **IV. Allegations Common to All Counts**

19 **The Pokéworks® Marks**

20 20. Founded in 2015, Pokéworks® is a healthy Hawaiian-inspired fast
21 casual restaurant brand operated by Beyond Franchise.

22 21. Pokéworks® has over 60 locations in 3 countries and is ranked #5 in
23 the Restaurant Business Magazine Future 50, a measure of the fastest-growing
24 restaurant concepts with annual sales between \$20 million and \$50 million.

25 22. In the five years since the Pokéworks® restaurants first opened,
26 Plaintiffs have invested significant capital and effort to make Pokéworks® the
27 established quality restaurants they are today.

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23. As part of these efforts, Plaintiffs have created, sought, obtained protection for, and enforced an impressive intellectual property portfolio, which includes various trademarks, service marks, trade dress, copyrights, names, logos, and commercial symbols used to identify the Pokéworks® System (the “Pokéworks Marks”) so that consumers throughout the United States will recognize the Pokéworks Marks as distinctly designating Pokéworks® restaurants.

24. Plaintiff Beyond Restaurant owns the Pokéworks Marks and licenses to Beyond Franchising the right to use the Pokéworks Marks and to sublicense the Pokéworks Marks to franchisees for use as part of their businesses.

25. Plaintiff Beyond Restaurant owns various trade names and service marks (which are on the principal register of the United States Patent and Trademark Office), logos, and derivations thereof (the “Pokéworks Marks”).

26. The following principal Pokéworks Marks, among others, have been registered by Beyond Restaurant on the Principal Register of the United States Patent and Trademark Office:

POKEWORKS	Reg. No. 5109887, Registered Dec. 27, 2016
POKEWORKS	Reg. No. 5785316, Registered June 25, 2019
POKE WORKS	Reg. No. 5046901, Registered Sept. 20, 2016
POKÉ YOUR WAY	Reg. No. 5232416, Registered June 27, 2017
POKÉ YOUR WAY	Reg. No. 5773195, Registered June 11, 2019
POKE YOUR WAY	Reg. No. 5776987, Registered June 11, 2019
Stylized POKEWORKS Logo	Reg. No. 5395083, Registered Feb. 6, 2018
Stylized POKEWORKS Logo	Reg. No. 5785317, Registered June 25, 2019
Stylized POKEWORKS Logo	Reg. No. 5395084, Registered Feb. 6, 2018
Stylized POKEWORKS Logo	Reg. No. 5785318, Registered June 25, 2019
Stylized POKEWORKS Logo	Reg. No. 5401714, Registered Feb. 13, 2018
Stylized POKEWORKS Logo	Reg. No. 5785319, Registered June 25, 2019
Stylized POKEWORKS Logo	Reg. No. 5776988, Registered June 11, 2019

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1 27. The foregoing registrations are in full force and effect and cover the
2 goods and services identified on the registration certificates. Plaintiffs have
3 continuously used each of the Pokéworks Marks since the date of their registration
4 and these marks are valid, subsisting, and some are now incontestable under the
5 Lanham Act, 15 U.S.C. § 1065.

6 28. Plaintiff Beyond Franchising has the exclusive right to sublicense the
7 use the Pokéworks Marks, as well as the distinctive Pokéworks® System, which
8 serves its customers by operating under a uniform business format system consisting
9 of high standards of service, the use of consistent quality products, all in accordance
10 with the business format created and developed by Beyond Restaurant.

11 29. Plaintiffs have given notice to the public of the registration of the
12 Pokéworks Marks as provided in 15 U.S.C. § 1111.

13 30. Through its franchise system, Beyond Franchise markets, promotes,
14 and provides services to its restaurant franchisees throughout the United States. In
15 order to identify the origin of their restaurant services, Beyond Franchise allows its
16 franchisees to utilize the Pokéworks Marks and to promote the Pokéworks brand
17 name.

18 **The Tysons Corner Franchise Agreement and Guaranty**

19 31. Certain of the Pokéworks restaurant locations are operated pursuant to
20 individual franchise agreements.

21 32. Defendants Urban Poke 1 and Urban Poke 2 are franchisees that
22 operated two Pokéworks® restaurants in Virginia.

23 33. Prior to entering into any agreement with Beyond Franchise,
24 Defendants were provided with a detailed Franchise Disclosure Document that set
25 forth in plain terms the respective rights of the parties during the franchise
26 relationship and attached copies of all of the contracts to be executed, including the
27 franchise agreement.

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1 34. On or about July 11, 2017, Urban Poke 1 signed a franchise agreement
2 with Beyond Franchise to operate a franchised restaurant in a territory consisting of
3 Tyson Corners, Virginia; Centerville, Virginia; and Reston, Virginia (the “Tysons
4 Corner Franchise Agreement”). A true copy of the Tysons Corner Franchise
5 Agreement is attached hereto as **Exhibit “A”** and is incorporated herein by
6 reference. Ultimately, a franchised restaurant was opened at 7933 Tysons Corner
7 Center #F12L, McLean, Virginia, 22102 (the “Tysons Corner Store”).

8 35. Concurrently with the execution of the Tysons Corner Franchise
9 Agreement, the Guarantors also provided Beyond Franchise with a written Guaranty
10 and Indemnity Agreement, personally guaranteeing Urban Poke 1’s obligations
11 under the Tysons Corner Franchise Agreement (“Tysons Corner Guaranty”). A true
12 copy of the Tysons Corner Guaranty is attached hereto as **Exhibit “B”** and is
13 incorporated herein by reference.

14 36. The Tysons Corner Guaranty expressly provides that the purpose of the
15 Guaranty was “to induce [Beyond Franchise] to enter into” the Tysons Corner
16 Franchise Agreement.

17 37. Pursuant to the terms of the Tysons Corner Guaranty, the Guarantors
18 guaranteed, among other things, “the due and punctual payment of all amounts
19 stated to be payable on the part of the Franchisee under the terms of the Franchise
20 Agreement, and the prompt and complete performance of all of the terms,
21 covenants, conditions and agreements contained on the part of the Franchisee
22 pursuant to the Franchise Agreement.” [§ 1]

23 38. The Guarantors also agreed “to indemnify and save harmless [Beyond
24 Franchise] from all losses, costs or damages arising out of any failure on the part of
25 the Franchisee to pay the amounts referred to in Section 1 hereof or to perform any
26 of the terms, covenants, conditions, or agreements referred to in Section 1 hereof.”
27 [§ 2]

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1 39. The Tysons Corner Guaranty further provides that it “is absolute and
2 unconditional and applicable to all past and future indebtedness of the Franchisee
3 without limit and however incurred.” [§ 3]

4 40. Liability of the Guarantors under the Tysons Corner Guaranty “shall be
5 joint and several.” [§ 10]

6 **The Royalty Relief Addendum, Release by Defendants, and the**
7 **Promissory Note**

8 41. In the first half of 2020, Defendants reached out to Beyond Franchise
9 for financial assistance because of the impact of the COVID-19 pandemic on the
10 restaurant industry generally, and on the Tysons Corner Store in particular.

11 42. Accordingly, the parties entered into an Addendum to the Tysons
12 Corner Franchise Agreement dated October 28, 2020 (the “Addendum”). A true
13 copy of the Addendum is attached hereto as **Exhibit “C”** and is incorporated herein
14 by reference.

15 43. Pursuant to the Addendum, Beyond Franchise agreed to waive royalties
16 for the Tysons Corner Franchise Agreement for the period of March 18, 2020 to
17 December 31, 2020, on the condition that Urban Poke 1 (1) participate in Beyond
18 Franchise’s Food Cost Recovery Program and (2) Urban Poke 1 and its Designated
19 Manager participate in good faith in weekly calls with the Franchise Business Coach
20 assigned by Beyond Franchise.

21 44. The Addendum contained a general release by Urban Poke 1 and the
22 Guarantors (“Release”), pursuant to which they “release[d] . . . and forever
23 discharge[d] [Beyond Franchise], any subsidiary or affiliate of [Beyond Franchise],
24 their respective officers, directors, members, employees, agents, contractors and
25 their respective successors, assigns, heirs and personal representatives, from and
26 against any and all liabilities, actions, causes of action, judgments, suits,
27 controversies, claims, demands, damages, costs and expenses whatsoever, in law or
28 in equity, *on account of or in any way arising out of or related to the offer, sale,*

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1 *administration, performance, and any default under or of the Agreements.”*

2 [Addendum § 8, emphasis added]

3 45. The parties expressly agreed that the Release “shall include, without
4 limitation, claims, demands and causes of action arising out of alleged
5 misrepresentations of any kind or nature whatsoever, alleged breaches of contract
6 (based upon implied, express, estoppel, waiver, or alternative theories of contractual
7 obligation), or breach of any alleged special, trust, agency or fiduciary relationship,
8 whether asserted or proposed to be asserted by way of claim, setoff, affirmative
9 defense, counterclaim, cross-claim or third party claim (collectively “Claims”)
10 arising out of any matters prior to the date of execution hereof, which have ever
11 existed, may now exist or may hereafter arise, known or unknown, foreseen or
12 unforeseen, to the full extent permitted by applicable law.” [Id.]

13 46. As of March 18, 2020, Urban Poke owed \$35,811.17 in unpaid fees,
14 charges and other amounts due to Beyond Franchise and Beyond Restaurant.

15 47. As a further condition to receiving the royalty relief set forth in the
16 Addendum, Urban Poke 1 agreed to issue a Promissory Note to Beyond Franchise in
17 the amount of \$33,653.96 and to Beyond Restaurant in the amount of \$2,157.21, to
18 be paid in 6 monthly principal installments beginning on July 1, 2021, and
19 continuing on the first day of each month until paid in full (“Note”). A true copy of
20 the Note is attached hereto as **Exhibit “D”** and is incorporated herein by reference.

21 48. The Note provided that no interest would be due as long as the
22 installments were timely paid when due. The first late installment, however, would
23 be subject to a one-time late fee of \$300.00. Then a charge of \$40.00 would be
24 assessed for each subsequent installment returned unpaid (NSF, Account Closed,
25 etc.). Late installments would bear interest on the principal amount due after their
26 original due date at the “Default Rate,” which shall be the lesser of the highest rate
27 allowed by law or 18% per annum until paid.

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1 49. The Note further provided that Plaintiffs “may accelerate the maturity
2 of this Note, and all principal and accrued interest shall become immediately due
3 and payable to the holder of this Note if an event of default occurs, without demand,
4 presentment, notice of demand or further right to cure the default.”

5 50. The “events of default” under the terms of the Note include, *inter alia*:

- 6 • “Failure of Borrower to pay any installment of principal or interest when
7 due;”
- 8 • “Borrower defaults under its Franchise Agreement with [Beyond
9 Franchise] and fails to cure the breach within any applicable grace periods,
10 or such Franchise Agreement terminates or is subject to termination for
11 any reason or no reason;” and
- 12 • “Failure of Borrower to maintain on a current basis any account with
13 [Beyond Franchise], [Beyond Restaurant], or any Affiliate;

14 51. Ming-Tsung Chi, Viengkeo Tzong, and David Tzong “jointly and
15 severally, unconditionally, irrevocably and absolutely guaranty the timely payment
16 and performance of this Note as [their] primary obligation.” They further “waive[d]
17 notice of default, notice of amendment, extension or modification, demand, protest,
18 notice, presentment, exhaustion of remedies and all other defenses and conditions
19 precedent to direct enforcement against” them.

20 52. Defendants, however, never made a single payment on the Note. There
21 is now due and owing the full \$35,811.17 principal, an initial \$300 late fee, interest
22 in the amount of \$9,716, and installment penalties of \$480, for a total of \$46,307.17
23 due on the Note.

24 **The Chantilly Franchise Agreement**

25 53. Around the time that the Addendum was being discussed, the owners of
26 Urban Poke 1 expressed an interest in operating a second franchised Pokéworks
27 restaurant.

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1 54. The owners of Urban Poke 1 formed a new entity, Urban Poke 2 and,
2 on or about October 28, 2020, Urban Poke 2 signed a franchise agreement with
3 Beyond Franchise (the “Chantilly Franchise Agreement”) to operate a franchised
4 Pokéworks® restaurant located at 14383 Newbrook Drive, #201, Chantilly, Virginia
5 20151 (the “Chantilly Store”). A true copy of the Chantilly Franchise Agreement is
6 attached hereto as **Exhibit “E”** and is incorporated herein by reference.

7 55. Based on Guarantors’ representation that they lacked funds for the new
8 restaurant, Beyond Franchise agreed that the initial \$25,000 franchise fee for the
9 Chantilly Franchise Agreement could be paid in two installments, with \$12,500 paid
10 upfront and the remaining \$12,500 deferred until July 2021.

11 56. Concurrently with the execution of the Chantilly Franchise Agreement,
12 David Tzong and Ming-Tung Chi also provided Beyond Franchise with a written
13 Guaranty and Indemnity Agreement, personally guaranteeing Urban Poke 2’s
14 obligations under the Chantilly Franchise Agreement (“Chantilly Guaranty”). A
15 true copy of the Chantilly Guaranty is attached hereto as **Exhibit “F”** and is
16 incorporated herein by reference.

17 57. The Chantilly Guaranty expressly provides that the purpose of the
18 Chantilly Guaranty was “to induce [Beyond Franchise] to enter into” the Chantilly
19 Franchise Agreement.

20 58. Pursuant to the terms of the Chantilly Guaranty, David Tzong and
21 Ming-Tung Chi guaranteed, among other things, “the due and punctual payment of
22 all amounts stated to be payable on the part of the Franchisee under the terms of the
23 Franchise Agreement, and the prompt and complete performance of all of the terms,
24 covenants, conditions and agreements contained on the part of the Franchisee
25 pursuant to the Franchise Agreement.” [§ 1]

26 59. David Tzong and Ming-Tung Chi also agreed “to indemnify and save
27 harmless [Beyond Franchise] from all losses, costs or damages arising out of any
28 failure on the part of the Franchisee to pay the amounts referred to in Section 1

1 hereof or to perform any of the terms, covenants, conditions, or agreements referred
2 to in Section 1 hereof.” [§ 2]

3 60. The Chantilly Guaranty further provides that it “is absolute and
4 unconditional and applicable to all past and future indebtedness of the Franchisee
5 without limit and however incurred.” [§ 3]

6 61. Liability of David Tzong and Ming-Tung Chi under the Chantilly
7 Guaranty “shall be joint and several.” [§ 10]

8 **Relevant Obligations in the Franchise Agreements**

9 62. Pursuant to section 2.1 of both Franchise Agreements, the Franchisees
10 were obligated to operate a Pokéworks® restaurant facility for a ten-year term,
11 during which time the Franchisees were permitted to use the Pokéworks® Marks in
12 association with the operation and use of the restaurant as part of Beyond
13 Franchise’s franchise system.

14 63. Section 3.1 of both Franchise Agreements provided the Franchisees
15 with a limited license to use the Pokéworks® Marks and System during the term of
16 the franchise. In relevant part, the Franchise Agreements provide:

17 On and subject to the terms and conditions contained in this
18 Agreement, the Franchisor grants to the Franchisee the
19 following (collectively, the “License”):

20 (a) an exclusive license to carry on the Business only at the
21 Store under the name Pokéworks™ or such other Marks as may
22 be specified from time to time by the Franchisor during the
23 Term or any Interim Period;

24 (b) a non-exclusive license to use and display the Marks during
25 the Term and any Interim Period in connection with the
26 operation, advertising and promotion of the Business; and

27 (c) a non-exclusive license to use, in connection with the Store,
28 the System.

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1 The License shall only remain in effect during the Term and so
2 long as the Franchisee continues to operate the Business and
3 does not commit an Event of Default under this Agreement.
4 Upon Termination, such license shall immediately be at an end
5 and the Franchisee shall immediately cease the use of the Marks
6 and the System and shall not thereafter in any way hold itself
7 out as being associated with the Franchisor or the restaurant
8 operations owned or licensed by the Franchisor.

9 64. Section 8.2 of both Franchise Agreements requires the Franchisees to
10 pay Beyond Franchise “an ongoing royalty (‘Royalty’ or ‘Royalties’) equal to six
11 percent (6%) of Gross Sales during the Term . . .”

12 65. Additionally, Section 5.7 of both Franchise Agreements requires the
13 Franchisees to “pay to the Franchisor an amount (“Marketing Fund Contributions”)
14 equal to one and one-half percent (1.5%) of Gross Sales, such amount to be
15 calculated and paid weekly as provided for in Section 8.3.”

16 66. Further, under Section 6.1(l) of both Franchise Agreements, the
17 Franchisees agreed that Beyond Franchise could “require Franchisee to purchase
18 and implement new technology initiatives” and that “Franchisee will be responsible
19 for all fees associated with these new technology initiatives.”

20 67. Section 5.11 of both Franchise Agreements requires the Franchisees to
21 “actively and continuously carry on the Business at the Store in compliance with the
22 terms of this Agreement.”

23 68. Section 9.5 of both Franchise Agreements defines an “Event of
24 Default” as including occurrence of an event set forth in Section 9.4. Among the
25 events listed in Section 9.4 are:

- 26 • “abandon[ing] or surrender[ing] or transfer[ing] control of the operation of
27 its Business or fail[ing] to actively carry on business from the Store and
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1 such condition continues for two (2) days after notice of such default is
2 given;

- 3 • “fail[ing] or refus[ing] to pay any amount owed to the Franchisor,
4 Franchisor’s parent, or any of Franchisor’s affiliates, or any authorized
5 supplier of the Franchisor or the landlord for any debt whatsoever within
6 five (5) days after a demand for payment . . .;”
7 • “sell[ing] or offer[ing] for sale any unauthorized product or service;” and
8 • “fail[ing] to comply with any other provision of this Agreement or any
9 specification, standard or procedure prescribed by Franchisor and
10 Franchisee does not correct such failure within five (5) days, (or such
11 longer period of time as Franchisor in its sole discretion deems
12 appropriate,) after written notice from Franchisor (which shall describe the
13 action that Franchisee must take) is delivered to Franchisee;

14 69. Section 10.2 of both Franchise Agreements specified the Franchisees’
15 obligations in the event of a termination of the Franchise Agreement, including their
16 obligation to immediately cease using all of the Pokéworks Marks. Specifically, the
17 Franchisees agreed that they would:

- 18 • “immediately discontinue the use of the Marks in accordance with Section
19 3.8 of the Agreement,” which, in turn, provides that “Franchisee shall
20 immediately cease all use of the Marks, including any colorable imitation
21 thereof, in connection with any goods, services or business and, without
22 restricting the generality of the foregoing, Franchisee agrees not to use the
23 word “Pokéworks” in any manner or form as a trademark, trade name or
24 otherwise in connection with any goods, services or business. Franchisee
25 agrees that this covenant is reasonable and necessary to protect the
26 integrity of the Marks, and that this covenant is enforceable by injunction,
27 including a temporary restraining order, by any court of competent
28 jurisdiction.”

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- 1 • “immediately remove all signs, displays, logos, symbols, slogans,
2 graphics, and other things, which contain or display any of the Marks or
3 other names belonging to Franchisor;”
- 4 • “deliver to Franchisor all advertising material, bulletins, all copies of the
5 Manual, handbooks, training tapes, drawings, designs, uniforms,
6 correspondence, stationery, files, and paper goods which are in the
7 possession or control of Franchisee and which belong to Franchisor or
8 which bear any Marks, and all copies thereof, including all disks, CD-
9 ROMs, DVDs and electronic copies;” and
- 10 • “take such action as Franchisor may request to disassociate itself from the
11 System including, without limitation, to cease and desist using website
12 addresses, e-mail addresses, domain names, and telephone numbers.”

13 70. Further, “all amounts owing by Franchisee to all third-party creditors
14 and to the Franchisor and any affiliate and subsidiary of Franchisor under any of the
15 agreements entered into by Franchisor or such affiliate or subsidiary shall
16 immediately become due and payable.”

17 71. Section 15.1(a) of both Franchise Agreements provides that “[d]uring
18 the Term or any Interim Period, neither Franchisee nor Guarantor shall either
19 individually or in partnership or in conjunction with any person or persons, firm,
20 association, syndicate or company as principal, agent, shareholder, employee,
21 advisor, or in any other manner whatsoever, directly or indirectly, carry on or be
22 engaged in or concerned with or interest in the operation of any business which
23 consists substantially of the sale of poké or sushi food items as its main product
24 line.”

25 72. Section 15.1(b) prohibits competition after termination for a period of
26 two years, as follows: “During the two (2) year period immediately following
27 Termination, neither the Franchisee nor the Guarantor shall either individually or in
28 partnership or in conjunction with any person or persons, firm, association,

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1 syndicate or company as principal, agent, shareholder, employee or in any other
2 manner whatsoever, directly or indirectly, carry on or be engaged in or concerned
3 with or interested in the operation of any business which consists substantially of the
4 sale of poké or sushi food items as its main product line and which is located (i) in
5 the Territory, or (ii) within ten (10) miles of any business operating under the
6 Marks.”

7 73. Section 15.5 of both Franchise Agreements provides for liquidated
8 damages for breach of any of the covenants in Section 15.1, as follows: “[i]n
9 addition to any other remedies or damages allowed and available to Franchisor
10 under this Agreement, if Franchisee breaches any of the covenants set out in Section
11 15.1 hereof, Franchisee shall to pay Franchisor, as Liquidated Damages, and not as a
12 penalty, the following amounts:

13 (a) a fee equal to Franchisors then-current Initial Franchise Fee for each
14 Competitive Business opened by Franchisee or any legal entity controlled by
15 Franchisee or, individually or in partnership or in conjunction with any person
16 or persons, firm, association, syndicate or company as principal, agent,
17 shareholder, employee or in any other manner whatsoever, directly or
18 indirectly, in violation of the said covenants; and

19 (b) five percent (5%) of each Competitive Business’s gross sales until
20 expiration of the non-competition period set forth in Section 15.1(b). Should
21 Franchisee fail to provide Franchisor with a detailed account of such gross
22 sales and all substantiating documentation deemed acceptable to Franchisor,
23 Franchisor shall estimate such gross sales for the purposes of calculating such
24 amount payable by Franchisee under this Section 15.5(b); and

25 (c) legal fees and disbursements incurred by Franchisor to enforce this
26 Section 15.”

27 74. Pursuant to Section 16.16 of both Franchise Agreements, the
28 Franchisees agreed that “[t]he court or arbitrator will have the right to award any

1 relief which it deems proper in the circumstances, including, without limitation,
2 money damages (with interest on unpaid amounts from the date due), lost profits,
3 specific performance, injunctive relief, and attorney's fees and costs."

4 75. Section 16.19 further provides that "If Franchisee is in default under
5 this Agreement, then Franchisee shall pay Franchisor all damages, costs, and
6 expenses (including legal fees) that Franchisor incurs as a result of Franchisee's
7 default under this Agreement or any other agreement between Franchisee (and its
8 affiliates) and Franchisor (and our affiliates)."

9 **Defendants' Defaults and Repudiation of the Franchise Agreements**

10 76. On or about April or May of 2021, Defendants asked Beyond Franchise
11 for another round of royalty relief.

12 77. Beyond Franchise responded that Defendants would need to resolve an
13 outstanding punch list for the Chantilly Store in order to be compliant before it
14 would consider offering relief.

15 78. After this exchange, Defendants stopped communicating with Beyond
16 Franchise and stopped showing up to any weekly calls.

17 79. Defendants also began operating a competing concept, Capital Musubi,
18 out of the Tysons Corner Store and Chantilly Store, in violation of the prohibition in
19 the Franchise Agreements against "sell[ing] or offer[ing] for sale any unauthorized
20 product or service" and the covenant not to compete in Section 15.1(a).

21 80. In response to a cease and desist letter sent by Beyond Franchising on
22 January 5, 2022, Defendants committed to permanently take down all Capital
23 Musubi branding and cease selling Capital Musubi products at the locations, and
24 Defendants did so for a short time.

25 81. Defendants, however, eventually resumed operation of the Capital
26 Musubi business out of the Tysons Corner Store and Chantilly Store and continue to
27 do so of the filing of this action.

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1 82. On or about March 7, 2022, Defendants sent a purported “notice of
2 termination” to Beyond Franchise, voicing various unfounded complaints and
3 purporting to “terminate” their franchises. A true and correct copy of the March 7,
4 2022 notice is attached hereto as **Exhibit “G”** and incorporated herein by reference.

5 83. Thereafter, on or about March 21, 2022, Defendants sent a purported
6 “formal notice of termination” to Beyond Franchise asserting that they “will
7 effectively terminate the Franchise Agreements” on March 31, 2022. A true and
8 correct copy of the March 21, 2022 notice is attached hereto as **Exhibit “H”** and
9 incorporated herein by reference.

10 84. Defendants, however, had no legal basis for terminating their
11 franchises.

12 85. There was no contractual basis for terminating either franchise
13 agreement. While Section 16.16(b) of the Chantilly Franchise Agreement provides
14 Urban Poke 2 with a right to terminate the Chantilly Franchise Agreement “by
15 written notice to Franchisor delivered within 60 days after the end of any fiscal year
16 if the Annual Statements for the [Tysons Corner] Store for the fiscal year then ended
17 and the preceding fiscal year delivered under Section 8.7 demonstrate that the
18 [Tysons Corner] Store has negative earnings before interest, taxes, depreciation and
19 amortization,” Urban Poke 2 did not timely deliver any such notice.

20 86. Nor is there any statutory basis for terminating the franchises. Virginia
21 Code § 13.1-565 permits a franchise to be “declared void by the franchisee at his
22 option by sending a written declaration of that fact and the reasons therefor to the
23 franchisor by registered or certified mail,” upon the occurrence of certain specified
24 events, none of which apply here. Moreover, the declaration must be sent no later
25 than 90 days of execution of the franchise, so Defendants’ purported “notice of
26 termination” sent on March 7, 2022 was untimely.

27 87. Further, the Franchisees have both failed to timely pay royalties,
28 marketing fund contributions, and technology fees owed to Beyond Franchise as

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1 they came due, or within five days after their payment was demanded by Beyond
2 Franchise. Specifically, at total of \$98,502.03 remains outstanding and due under
3 the two franchise agreements for royalties, marketing, and technology fees—
4 \$59,489.83 under the Tysons Corner Franchise Agreement and \$39,012.20 under the
5 Chantilly Franchise Agreement.

6 88. On or about March 22, 2022, counsel for Beyond Franchise responded
7 to Defendants' March 7 and 21, 2022 notices, noting that there was no basis for
8 Defendants' unilateral repudiation of their contracts. Counsel for Beyond Franchise
9 further advised Defendants that (1) they were in breach of their Franchise
10 Agreements for failing to pay Beyond Franchise outstanding royalties, marketing
11 and technology fees and (2) they had until April 4 to cure this monetary default. A
12 true and correct copy of the March 22, 2022 demand is attached hereto as **Exhibit**
13 **"I"** and incorporated herein by reference.

14 89. On or about March 24, 2022, counsel for Defendants responded by
15 "rejecting all the claims asserted" in the March 22, 2022 letter.

16 90. Following their "notice of termination," Defendants ceased to operate
17 the franchised Pokéworks® businesses at the Tysons Corner Store and Chantilly
18 Store, in breach of their obligations under the Franchise Agreements to "actively
19 and continuously carry on the Business at the Store."

20 91. As of April 1, 2022, Defendants had turned off their Point-of-Sale
21 system and all delivery services for both locations.

22 92. Defendants' anticipatory repudiation of the Franchise Agreements also
23 constituted an event of default under the Note, permitting Plaintiffs to accelerate the
24 maturity of the Note such that all principal and accrued interest shall become
25 immediately due and payable to Plaintiffs, without demand, presentment, notice of
26 demand or further right to cure the default.

27 93. The anticipatory repudiation of the Franchise Agreements precludes the
28 Franchisees from any further use of the Pokéworks Marks in or around the locations.

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1 94. Nevertheless, since their anticipatory repudiation of the Franchise
2 Agreements, Defendants have continued to use the Pokéworks Marks without
3 authorization to induce the public to patronize their locations through, among other
4 things, failure to remove Pokéworks exterior signage, interior menu boards, and
5 monument signage.

6 95. By letter dated April 11, 2022, Beyond Franchise reiterated the
7 Franchisees' post-termination obligations under the Franchise Agreements,
8 including the requirement that they completely "de-identify" their locations as
9 Pokéworks restaurants. The April 11, 2022 notice advised the Franchisees that, in
10 light of their anticipatory repudiation of the Franchise Agreements, they were
11 required to: (a) immediately discontinue the use of all trade names, service marks,
12 signs, and other forms of advertising, and other indicia of operation as a Pokéworks
13 restaurant, (b) discontinue the use of other materials on the premises effectively to
14 distinguish the same from their former appearance as Pokéworks restaurants, (c)
15 removed all items bearing the Pokéworks Marks, (d) change all signs and any
16 listings in directories and similar guides in which the locations were identified as a
17 Pokéworks restaurant, and (e) pay to Beyond Franchise the sum of \$1,388,961.03,
18 consisting of \$949,986.48 in liquidated damages under Section 16.16 for premature
19 termination, \$294,165.35 in liquidated damages under Section 15.5 for breach of
20 their restrictive covenants, the outstanding balance of \$98,502.03 for unpaid
21 royalties, marketing and technology fees, and \$46,307.17 due on the Note on or
22 before April 14, 2022. A true copy of the April 11, 2022 Notice is attached hereto
23 as **Exhibit "J"** and incorporated herein by this reference.

24 96. Defendants, however, responded on April 14, 2022, rejecting Plaintiffs'
25 "demand for payment of any sums." A true copy of Defendants' April 14, 2022
26 Notice is attached hereto as **Exhibit "K"** and incorporated herein by this reference.

27 97. Upon information and belief, Defendants continue to misuse the
28 Pokéworks Marks, despite demand from Beyond Franchise.

99. Plaintiffs have no adequate remedy at law for Defendants' continuing violation of Plaintiffs' rights and Plaintiffs will suffer irreparable injury in an amount that cannot be ascertained at this time if Defendants are allowed to continue to wrongfully use Plaintiffs' valuable Pokéworks Marks, and/or any confusingly similar variations thereof.

100. By reason of the foregoing, Plaintiffs are entitled to preliminary and permanent injunctive relief against Defendants, and anyone acting in concert with Defendants, to restrain their further unlawful acts.

**(Breach of Contract and Anticipatory Repudiation of
Tysons Corner Franchise Agreement)
*Against Urban Poke 1***

102. As set forth above, Beyond Franchise, on the one hand, and Urban
Poke 1, on the other hand, are parties to a written Tysons Corner Franchise
Agreement dated July 11, 2017.

103. Urban Poke 1 is in material breach of the Tysons Corner Franchise Agreement because, among other things, it has been selling and/or offering for sale unauthorized products of a competitor, has failed and/or refused to pay royalties, marketing fund contributions and technology fees owed to Beyond Franchise as they

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1 come due or within five days after its demand for payment, has abandoned and
2 ceased operating the franchised business, and has failed to comply with its post-
3 termination obligation to de-identify the Tysons Corner Store.

4 104. Additionally, on or about March 7 and 21, 2022, Urban Poke 1
5 anticipatorily repudiated the Tysons Corner Franchise Agreement without legal
6 basis, as set forth above.

7 105. Beyond Franchise has performed all of its obligations under the Tysons
8 Corner Franchise Agreement, except those obligations that Beyond Franchise was
9 prevented or excused from performing, if any, due to the conduct of Urban Poke 1
10 as alleged herein.

11 106. None of Urban Poke 1's obligations under the Tysons Corner Franchise
12 Agreement have been excused.

13 107. As a proximate result of Urban Poke 1's aforementioned breaches of
14 the Tysons Corner Franchise Agreement and premature termination of the Tysons
15 Corner Franchise Agreement, Beyond Franchise has suffered loss, damage and
16 injury, including but not limited to, unpaid royalties, marketing, and technology fees
17 in the amount of \$59,489.83 and a loss of future revenue from these recurring fees
18 over the remainder of the ten year term of the Tysons Corner Franchise Agreement.

19 108. Pursuant to Section 16.16 of the Tysons Corner Franchise Agreement,
20 Urban Poke 1 agreed that if the Tysons Corner Franchise Agreement is terminated
21 because of Urban Poke 1's default, Urban Poke 1 shall pay liquidated damages to
22 Beyond Franchise in accordance with a formula specified in the Tysons Corner
23 Franchise Agreement, namely a lump sum amount equal to the net present value of
24 the Royalties and Marketing Fund Contributions that would have become due
25 following termination of the agreement for the period the agreement would have
26 remained in effect but for Urban Poke 1's default. It further provides that Royalties
27 and Marketing Fund Contributions shall be calculated based on the business's
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1 average monthly Gross Sales for the twelve (12) months preceding the termination
2 date.

3 109. As a result of its anticipatory repudiation of the Tysons Corner
4 Franchise Agreement, Urban Poke 1 is also obligated to pay Beyond Franchise
5 liquidated damages in the amount of \$475,427.20, as calculated pursuant to Section
6 16.16 of the Tysons Corner Franchise Agreement—the average monthly Gross Sales
7 of \$99,047.47 from April 1, 2021 to March 31, 2022 gives monthly Royalties of
8 \$5,942.84 and Marketing Fund Contributions of \$1,485.71, times 64 months
9 remaining in the 10 year term.

10 110. Section 15.5 of the Tysons Corner Franchise Agreement provides for
11 liquidated damages for breach of any of the covenants in Section 15.1, consisting of
12 the following amounts:

13 (a) a fee equal to Franchisors then-current Initial Franchise Fee for each
14 Competitive Business opened by Franchisee or any legal entity controlled by
15 Franchisee or, individually or in partnership or in conjunction with any person
16 or persons, firm, association, syndicate or company as principal, agent,
17 shareholder, employee or in any other manner whatsoever, directly or
18 indirectly, in violation of the said covenants; and

19 (b) five percent (5%) of each Competitive Business's gross sales until
20 expiration of the non-competition period set forth in Section 15.1(b). Should
21 Franchisee fail to provide Franchisor with a detailed account of such gross
22 sales and all substantiating documentation deemed acceptable to Franchisor,
23 Franchisor shall estimate such gross sales for the purposes of calculating such
24 amount payable by Franchisee under this Section 15.5(b); and

25 (c) legal fees and disbursements incurred by Franchisor to enforce this
26 Section 15.”

27 111. As a result of the breach of the non-compete provision in Section
28 15.1(a) of the Tysons Corner Franchise Agreement, Urban Poke 1 is also obligated

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1 to pay Beyond Franchise liquidated damages in the amount of \$294,165.35, as
2 calculated pursuant to Section 15.5 of the Tysons Corner Franchise Agreement.
3 Specifically, the then-current Initial Franchise Fee is \$35,000, and for 2 locations
4 would be \$70,000. That amount is then added to 5% of an estimated monthly gross
5 sales of \$166,048.41 (based on the average gross sales of the Pokeworks businesses
6 because Defendants did not provide substantiating documentation of their sales data
7 for their competing business), which would be \$8,302.42, for 27 months (to cover
8 the two year non-competition period plus at least three months of competing while
9 still operating the Pokeworks location), or \$224,165.35.

10 112. At the time the Tysons Corner Franchise Agreement was signed, it
11 would have been difficult to estimate the damages in the event of a later breach.
12 The formulas agreed upon by the parties were a reasonable attempt at the time to fix
13 the damages that would be incurred in the event of a breach.

14 113. Notwithstanding Beyond Franchise's demand for payment, Urban Poke
15 1 has failed and refused to pay Beyond Franchise the outstanding balance of
16 \$59,489.83 for unpaid royalties, marketing, and technology fees, as well as the
17 liquidated damages amounts.

18 114. Beyond Franchise is also entitled to its reasonable attorneys' fees and
19 costs pursuant to Section 16.16 and 16.19 of the Tysons Corner Franchise
20 Agreement. Beyond Franchise has retained the services of Bryan Cave Leighton
21 Paisner LLP to commence this action to enforce its rights under the Tysons Corner
22 Franchise Agreement, and Beyond Franchise is, therefore, entitled to recover its
23 attorneys' fees and costs from Urban Poke 1 in a sum according to proof.

24 115. In the event that the Court determines that Urban Poke 1 is not required
25 to pay Beyond Franchise liquidated damages as required by Sections 16.16 and/or
26 15.5 of the Tysons Corner Franchise Agreement then, in the alternative, Urban Poke
27 1 is liable to Beyond Franchise for actual damages for the premature termination of
28 the Tysons Corner Franchise Agreement and violation of the restrictive covenants

1 in an amount which has yet to be ascertained, but which will conform to proof at
2 trial, together with interest, attorneys' fees, and costs of suit.

3 **SECOND CLAIM FOR RELIEF**

4 **(Breach of Tysons Corner Guaranty)**

5 ***Against the Guarantors***

6 116. Plaintiffs re-allege and incorporate by reference the allegations
7 contained in paragraphs 1 through 115 of this Complaint, as though fully set forth
8 herein.

9 117. The Guarantors executed and delivered to Beyond Franchise a written
10 Guaranty dated July 11, 2017, personally guarantying Urban Poke 1's obligations
11 under the Tysons Corner Franchise Agreement.

12 118. The written Tysons Corner Guaranty is valid and binding on the
13 Guarantors.

14 119. Pursuant to the terms of the Tysons Corner Guaranty, the Guarantors
15 guaranteed the due and punctual payment of all amounts stated to be payable on the
16 part of Urban Poke 1 under the terms of the Tysons Corner Franchise Agreement,
17 and the prompt and complete performance of all of the terms, covenants, conditions
18 and agreements contained on the part of Urban Poke 1 pursuant to the Tysons
19 Corner Franchise Agreement under the Tysons Corner Franchise Agreement.

20 120. The purpose of the Tysons Corner Guaranty was to induce Beyond
21 Franchise to enter into the Tysons Corner Franchise Agreement and Beyond
22 Franchise did, in fact, enter into the Tysons Corner Franchise Agreement in reliance
23 on the Tysons Corner Guaranty.

24 121. Beyond Franchise has duly performed all of its duties and obligations
25 under the Tysons Corner Guaranty and Tysons Corner Franchise Agreement, if any,
26 or has otherwise been excused from such performance due to conduct of Urban
27 Poke 1 and/or Guarantors and their prior material breaches.

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1 122. As set forth above, Urban Poke 1 has defaulted and failed to perform
2 certain material obligations owed under the Tysons Corner Franchise Agreement.
3 Among other things, Urban Poke 1 has anticipatorily repudiated, and thereby
4 unilaterally terminated, the Tysons Corner Franchise Agreement, has failed and
5 refused to pay Beyond Franchise amounts owed under the Tysons Corner Franchise
6 Agreement, has been selling and/or offering for sale unauthorized products of a
7 competitor, has abandoned and ceased operating the franchised business, and has
8 failed to comply with its post-termination obligation to de-identify the Tysons
9 Corner Store.

10 123. The Guarantors, and each of them, breached the Tysons Corner
11 Guaranty by, among other things, failing to pay Beyond Franchise the sums due and
12 owing under the Guaranty by reason of Urban Poke 1's default and nonperformance
13 of obligations under the Tysons Corner Franchise Agreement, as described above,
14 and/or failing to cause Urban Poke 1 to perform each obligation required under the
15 Tysons Corner Franchise Agreement, despite their obligation to do so.

16 124. None of the Guarantors' obligations under the Tysons Corner Guaranty
17 have been excused.

18 125. As a direct and proximate result of the Guarantors' breach of the
19 Tysons Corner Guaranty, Beyond Franchise has sustained, is sustaining, and will
20 continue to sustain damages in an amount which has yet to be ascertained, but which
21 will conform to proof at trial.

22 126. Pursuant to the Tysons Corner Guaranty, the Guarantors are jointly and
23 severally liable to Beyond Franchise for Urban Poke 1's unpaid royalties, marketing
24 and technology fees in the amount of \$59,489.83 and liquidated damages in the
25 amount of \$769,592.55 (or actual damages in an amount which has yet to be
26 ascertained, but which will conform to proof at trial), together with interest,
27 attorneys' fees, and costs of suit.

28 ///

THIRD CLAIM FOR RELIEF

(Breach of Contract and Anticipatory Repudiation of Chantilly Franchise Agreement)

Against Urban Poke 2

127. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1 through 126 of this Complaint, as though fully set forth herein.

128. As set forth above, Beyond Franchise, on the one hand, and Urban Poke 2, on the other hand, are parties to a written Chantilly Franchise Agreement dated October 28, 2020.

129. Urban Poke 2 is in material breach of the Chantilly Franchise Agreement because, among other things, it has been selling and/or offering for sale unauthorized products of a competitor, has failed and/or refused to pay royalties, marketing fund contributions and technology fees owed to Beyond Franchise as they come due or within five days after its demand for payment, has abandoned and ceased operating the franchised business, and has failed to comply with its post-termination obligation to de-identify the Chantilly Store.

130. Additionally, on or about March 7 and 21, 2022, Urban Poke 2 anticipatorily repudiated, and thereby unilaterally terminated, the Chantilly Franchise Agreement without legal basis, as set forth above. Such conduct amounts to a material breach of the Chantilly Franchise Agreement and permits Beyond Franchise to sue immediately for breach.

131. Beyond Franchise has performed all of its obligations under the Chantilly Franchise Agreement, except those obligations that Beyond Franchise was prevented or excused from performing, if any, due to the conduct of Urban Poke 2 as alleged herein.

132. None of Urban Poke 2's obligations under the Chantilly Franchise Agreement have been excused.

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1 133. As a proximate result of Urban Poke 2's aforementioned breaches of
2 the Chantilly Franchise Agreement and premature termination of the Chantilly
3 Franchise Agreement, Beyond Franchise has suffered loss, damage and injury,
4 including but not limited to unpaid royalties, marketing, and technology fees in the
5 amount of \$39,012.20 and a loss of future revenue from these recurring fees over the
6 remainder of the ten year term of the Chantilly Franchise Agreement.

7 134. Pursuant to Section 16.16 of the Chantilly Franchise Agreement, Urban
8 Poke 2 agreed that if the Chantilly Franchise Agreement is terminated because of
9 Urban Poke 2's default, Urban Poke 2 shall pay liquidated damages to Beyond
10 Franchise in accordance with a formula specified in the Chantilly Franchise
11 Agreement, namely "a lump sum amount equal to the net present value of the
12 Royalties and Marketing Fund Contributions that would have become due following
13 termination of the agreement for the period the agreement would have remained in
14 effect but for Urban Poke 1's default. It further provides that Royalties and
15 Marketing Fund Contributions shall be calculated based on the business' average
16 monthly Gross Sales for the twelve (12) months preceding the termination date."

17 135. As a result of its anticipatory repudiation of the Chantilly Franchise
18 Agreement, Urban Poke 2 is also obligated to pay Beyond Franchise liquidated
19 damages in the amount of \$474,559.28, as calculated pursuant to Section 16.16 of
20 the Chantilly Franchise Agreement—the average monthly Gross Sales of
21 \$67,000.94 from April 1, 2021 to March 31, 2022 gives monthly Royalties of
22 \$4,056.06 and Marketing Fund Contributions of \$507.01, times 104 months
23 remaining in the 10 year term.

24 136. Section 15.5 of the Chantilly Franchise Agreement provides for
25 liquidated damages for breach of any of the covenants in Section 15.1, consisting of
26 the following amounts:

- 27 (a) a fee equal to Franchisors then-current Initial Franchise Fee for each
28 Competitive Business opened by Franchisee or any legal entity controlled by

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1 Franchisee or, individually or in partnership or in conjunction with any person
2 or persons, firm, association, syndicate or company as principal, agent,
3 shareholder, employee or in any other manner whatsoever, directly or
4 indirectly, in violation of the said covenants; and

5 (b) five percent (5%) of each Competitive Business's gross sales until
6 expiration of the non-competition period set forth in Section 15.1(b). Should
7 Franchisee fail to provide Franchisor with a detailed account of such gross
8 sales and all substantiating documentation deemed acceptable to Franchisor,
9 Franchisor shall estimate such gross sales for the purposes of calculating such
10 amount payable by Franchisee under this Section 15.5(b); and

11 (c) legal fees and disbursements incurred by Franchisor to enforce this
12 Section 15."

13 137. As a result of the breach of the non-compete provision in Section
14 15.1(a) of the Chantilly Franchise Agreement, Urban Poke 2 is also obligated to pay
15 Beyond Franchise liquidated damages in the amount of \$294,165.35, as calculated
16 pursuant to Section 15.5 of the Chantilly Franchise Agreement. Specifically, the
17 then-current Initial Franchise Fee is \$35,000, and for 2 locations would be \$70,000.
18 That amount is then added to 5% of an estimated monthly gross sales of
19 \$166,048.41 (based on the average gross sales of the Pokeworks businesses because
20 Defendants did not provide substantiating documentation of their sales data for their
21 competing business), which would be \$8,302.42, for 27 months (to cover the two
22 year non-competition period plus at least three months of competing while still
23 operating the Pokeworks location), or \$224,165.35.

24 138. At the time the Chantilly Franchise Agreement was signed, it would
25 have been difficult to estimate the damages in the event of a later breach. The
26 formulas agreed upon by the parties were a reasonable attempt at the time to fix the
27 damages that would be incurred in the event of a breach.

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1 139. Notwithstanding Beyond Franchise's demand for payment, Urban Poke
2 2 has failed and refused to pay Beyond Franchise the outstanding balance of
3 \$39,012.20 for unpaid royalties, marketing, and technology fees, as well as the
4 liquidated damages amounts.

5 140. Beyond Franchise is also entitled to its reasonable attorneys' fees and
6 costs pursuant to Section 16.16 and 16.19 of the Chantilly Franchise Agreement.
7 Beyond Franchise has retained the services of Bryan Cave Leighton Paisner LLP to
8 commence this action to enforce its rights under the Chantilly Franchise Agreement,
9 and Beyond Franchise is, therefore, entitled to recover its attorneys' fees and costs
10 from Urban Poke 2 in a sum according to proof.

11 141. In the event that the Court determines that Urban Poke 2 is not required
12 to pay Beyond Franchise liquidated damages as required by Section 16.16 and/or
13 15.5 of the Chantilly Franchise Agreement then, in the alternative, Urban Poke 2 is
14 liable to Beyond Franchise for actual damages for the premature termination of the
15 Chantilly Franchise Agreement and violation of the restrictive covenants, in an
16 amount which has yet to be ascertained, but which will conform to proof at trial,
17 together with interest, attorneys' fees, and costs of suit.

18 **FOURTH CLAIM FOR RELIEF**

19 **(For Breach of Chantilly Guaranty)**

20 ***Against David Tzong and Ming-Tung Chi***

21 142. Plaintiffs re-allege and incorporate by reference the allegations
22 contained in paragraphs 1 through 141 of this Complaint, as though fully set forth
23 herein.

24 143. David Tzong and Ming-Tung Chi executed and delivered to Beyond
25 Franchise a written Guaranty dated October 28, 2020, personally guarantying Urban
26 Poke 2's obligations under the Chantilly Franchise Agreement.

27 144. The written Chantilly Guaranty is valid and binding on David Tzong
28 and Ming-Tung Chi.

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1 145. Pursuant to the terms of the Chantilly Guaranty, David Tzong and
2 Ming-Tung Chi guaranteed the due and punctual payment of all amounts stated to
3 be payable on the part of Urban Poke 2 under the terms of the Chantilly Franchise
4 Agreement, and the prompt and complete performance of all of the terms,
5 covenants, conditions and agreements contained on the part of Urban Poke 2
6 pursuant to the Chantilly Franchise Agreement under the Chantilly Franchise
7 Agreement.

8 146. The purpose of the Chantilly Guaranty was to induce Beyond Franchise
9 to enter into the Chantilly Franchise Agreement and Beyond Franchise did, in fact,
10 enter into the Chantilly Franchise Agreement in reliance on the Chantilly Guaranty.

11 147. Beyond Franchise has duly performed all of its duties and obligations
12 under the Chantilly Guaranty and Chantilly Franchise Agreement, if any, or has
13 otherwise been excused from such performance due to conduct of Urban Poke 2
14 and/or David Tzong and Ming-Tung Chi and their prior material breaches.

15 148. As set forth above, Urban Poke 2 has defaulted and failed to perform
16 certain material obligations owed under the Chantilly Franchise Agreement. Among
17 other things, Urban Poke 2 has anticipatorily repudiated, and thereby unilaterally
18 terminated, the Chantilly Franchise Agreement, has failed and refused to pay
19 Beyond Franchise amounts owed under the Chantilly Franchise Agreement, has
20 been selling and/or offering for sale unauthorized products of a competitor, has
21 abandoned and ceased operating the franchised business, and has failed to comply
22 with its post-termination obligation to de-identify the Chantilly Store.

23 149. David Tzong and Ming-Tung Chi, and each of them, breached the
24 Chantilly Guaranty by, among other things, failing to pay Beyond Franchise the
25 sums due and owing under the Chantilly Guaranty by reason of Urban Poke 2's
26 default and nonperformance of obligations under the Chantilly Franchise
27 Agreement, as described above, and/or failing to cause Urban Poke 2 to perform
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1 each obligation required under the Chantilly Franchise Agreement, despite their
2 obligation to do so.

3 150. None of the obligations of David Tzong and Ming-Tung Chi under the
4 Chantilly Guaranty have been excused.

5 151. As a direct and proximate result of the breach of the Chantilly Guaranty
6 by David Tzong and Ming-Tung Chi, Beyond Franchise has sustained, is sustaining,
7 and will continue to sustain damages in an amount which has yet to be ascertained,
8 but which will conform to proof at trial.

9 152. Pursuant to the Chantilly Guaranty, the Guarantors are jointly and
10 severally liable to Beyond Franchise for Urban Poke 2's unpaid royalties, marketing
11 and technology fees in the amount of \$39,012.20 and liquidated damages in the
12 amount of \$768,724.63 (or actual damages in an amount which has yet to be
13 ascertained, but which will conform to proof at trial), together with interest,
14 attorneys' fees, and costs of suit.

15 **FIFTH CLAIM FOR RELIEF**

16 **(Breach of Promissory Note)**

17 ***Against Urban Poke 1, Ming-Tsung Chi, Viengkeo Tzong, and David Tzong***

18 153. Plaintiffs re-allege and incorporate by reference the allegations
19 contained in paragraphs 1 through 152 of this Complaint, as though fully set forth
20 herein.

21 154. Plaintiffs have been at all times and are currently the holders of the
22 Note with the rights to enforce it.

23 155. The Note is a valid and enforceable contract between Plaintiffs and
24 Defendants.

25 156. Plaintiffs have fully performed under the Note by forbearing collection
26 of the \$35,811.17 owed by Urban Poke 1.

27 157. Urban Poke 1 is in default under the Note by, among other things,
28 failing to repay the principal as contractually obligated.

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1 158. Defendants' anticipatory repudiation of the Franchise Agreements also
2 constituted an event of default under the Notice, permitting Plaintiffs to accelerate
3 the maturity of the Note such that all principal and accrued interest shall become
4 immediately due and payable to Plaintiffs, without demand, presentment, notice of
5 demand or further right to cure the default.

6 159. Despite repeated demands and attempts to work with Urban Poke 1 on
7 repayment, as of the filing of this Complaint, Urban Poke 1 has never made a single
8 payment on the Note.

9 160. As a direct and proximate result of Urban Poke 1's defaults, there is
10 immediately due and owing to Plaintiffs the unpaid principal sum of \$35,811.17, an
11 initial \$300 late fee, interest in the amount of \$9,716, and installment penalties of
12 \$480, for a total of \$46,307.17 due on the Note, plus interest accruing at the rate of
13 the lesser of the highest rate allowed by law or 18% per annum through the final
14 date of repayment or judgment.

15 161. Ming-Tsung Chi, Viengkeo Tzong, and David Tzong are jointly and
16 severally liable for payment, having unconditionally, irrevocably and absolutely
17 guaranteed the timely payment and performance of the Note as their primary
18 obligation.

19 **SIXTH CLAIM FOR RELIEF**

20 **(Account Stated)**

21 ***Against Urban Poke 1, Ming-Tsung Chi, Viengkeo Tzong, and David Tzong***

22 162. Plaintiffs re-allege and incorporate by reference the allegations
23 contained in paragraphs 1 through 161 of this Complaint, as though fully set forth
24 herein.

25 163. Defendants Urban Poke 1, Ming-Tsung Chi, Viengkeo Tzong, and
26 David Tzong became indebted to Plaintiffs within the last four years for money due
27 from previous transactions.

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1 164. An account was stated in writing by and between Plaintiffs and Urban
2 Poke 1, and on such statement a balance of \$35,811.17 was found due to Plaintiffs
3 from Urban Poke 1.

4 165. Urban Poke 1, Ming-Tsung Chi, Viengkeo Tzong, and David Tzong
5 agreed to pay to Plaintiffs said balance.

6 166. Although demanded by Plaintiffs, Urban Poke 1, Ming-Tsung Chi,
7 Viengkeo Tzong, and David Tzong have not paid Plaintiffs all of the amounts owed
8 under this account.

9 167. There is now due, owing, and unpaid from Defendants to Plaintiffs the
10 sum of \$46,307.17, plus interest accruing at the rate of the lesser of the highest rate
11 allowed by law or 18% per annum through the final date of repayment or judgment.

12 168. Plaintiffs have incurred attorney's fees in connection with this matter,
13 in an amount to be determined at trial, which fees Plaintiffs are entitled to recover
14 pursuant to agreement.

15 **SEVENTH CLAIM FOR RELIEF**

16 **(Federal Trademark Infringement and False Designation of Origin, 15 U.S.C.**

17 **§§ 1114(1), 1125(a))**

18 ***Against All Defendants***

19 169. Plaintiffs re-allege and incorporate by reference the allegations
20 contained in paragraphs 1 through 168 of this Complaint, as though fully set forth
21 herein.

22 170. Section 32 of the Lanham Act, 15 U.S.C. § 1114(1)(a), provides in
23 pertinent part that “[a]ny person who shall, without the consent of the registrant —
24 use in commerce any reproduction, counterfeit, copy, or colorable imitation of a
25 registered mark in connection with the sale, offering for sale, distribution, or
26 advertising of any goods or services on or in connection with which such use is
27 likely to cause confusion, or to cause mistake, or to deceive . . . shall be liable in a
28 civil action by the registrant”

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1 171. Defendants marketed, promoted, offered for sale, and sold, and
2 continues to market, promote, offer for sale, and sell food and beverages at the
3 restaurants through the unauthorized use of the Pokéworks Marks after their
4 repudiation of the Franchise Agreements, and such use caused and is likely to
5 continue to cause confusion or mistake among prospective or actual customers, in
6 violation of Section 32 of the Lanham Act.

7 172. Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), provides in
8 pertinent part that “[a]ny person who, on or in connection with any goods or
9 services . . . uses in commerce any word, term, name, symbol . . . or any false
10 designation of origin, false or misleading description of fact, or false or misleading
11 representation of fact, which is likely to cause confusion, or to cause mistake, or to
12 deceive as to affiliation . . . or as to the origin, sponsorship, or approval of . . . goods
13 [or] services . . . shall be liable in a civil action”

14 173. The acts of Defendants in marketing, promoting, offering for sale, and
15 selling food and beverages at their restaurants, through and with the Pokéworks
16 Marks, after their repudiation of the Franchise Agreements constitute:

17 (a) a false designation of origin;
18 (b) a false and misleading description of fact; and
19 (c) a false and misleading representation of fact;
20 that caused and are likely to continue to cause confusion, or to cause mistake, or
21 deception, as to the affiliation of the Defendants’ restaurants with Plaintiffs, and to
22 cause confusion, or to cause mistake, or deception, to the effect that Plaintiffs
23 sponsor or approve of the goods and services that Defendants provide at their
24 restaurants, all in violation of Section 43(a) of the Lanham Act.

25 174. Defendants’ on-going acts of infringement in violation of Sections 32
26 and 43(a) of the Lanham Act are malicious, fraudulent, willful, and deliberate.

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1 175. Defendants' on-going acts of infringement in violation of Sections 32
2 and 43(a) of the Lanham Act have inflicted and continue to inflict irreparable harm
3 on Plaintiffs.

4 176. Upon information and belief, Defendants' aforesaid acts in violation of
5 Section 32 and 43(a) of the Lanham Act have caused and will continue to cause
6 damage and irreparable harm to Plaintiffs, and are likely to continue unabated,
7 thereby causing further damage and irreparable harm to Plaintiffs and to the
8 goodwill and business reputation symbolized by and associated with their valuable
9 Pokéworks Marks, unless preliminarily and permanently enjoined and restrained by
10 the Court.

11 177. Plaintiffs have no adequate remedy at law for Defendants' continuing
12 violation of Plaintiffs' rights and Plaintiffs will suffer irreparable injury in an
13 amount that cannot be ascertained at this time if Defendants are allowed to continue
14 to wrongfully use Plaintiffs' valuable Pokéworks Marks, and/or any confusingly
15 similar variations thereof.

16 178. By reason of the foregoing, Plaintiffs are entitled to preliminary and
17 permanent injunctive relief against Defendants, and anyone acting in concert with
18 Defendants, to restrain further unlawful acts.

19 179. Defendants have profited and are profiting from their unlawful conduct
20 and Plaintiffs have been and are being damaged as a proximate result of such
21 conduct. Plaintiffs are, therefore, entitled to recover damages from Defendants in an
22 amount to be proved at trial, as well as the costs of corrective advertising.

23 **EIGHTH CLAIM FOR RELIEF**

24 **(Common Law Trademark Infringement)**

25 ***Against All Defendants***

26 180. Plaintiffs re-allege and incorporate by reference the allegations
27 contained in paragraphs 1 through 179 of this Complaint, as though fully set forth
28 herein.

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1 181. Plaintiffs have continuously used the Pokéworks Marks in commerce in
2 connection with Plaintiffs' goods and services since at least as early as October 15,
3 2015, and, accordingly, have established common law trademark rights in the
4 Pokéworks Marks.

5 182. The Pokéworks Marks are inherently distinctive and/or have acquired
6 strong secondary meaning among the trade, with consumers, and the relevant
7 purchasing public in the trade, in the State of California and indeed throughout the
8 entire United States. Through Plaintiffs' use, consumers and the relevant
9 purchasing public have come to use the Pokéworks Marks to associate, identify, and
10 distinguish Plaintiffs as the source of origin of Plaintiffs' goods and services.

11 183. Defendants' unlicensed, unconsented to, and otherwise unauthorized
12 use of the Pokéworks Marks and/or confusingly similar variations thereof on or in
13 connection with marketing, advertising, promoting, offering for sale, and selling its
14 similar products and/or services after their repudiation of the Franchise Agreements
15 constitutes infringement of Plaintiffs' common law trademark rights in the
16 Pokéworks Marks and misappropriates the valuable goodwill developed by
17 Plaintiffs in the Pokéworks Marks.

18 184. On information and belief, such conduct has caused and is likely to
19 continue to cause the general public, trade, consumers, and the relevant purchasing
20 public to be confused, misled and deceived as to the source of origin of Defendants'
21 goods and/or services, and, further, to confuse, mislead, and deceive such persons
22 into wrongly believing that Defendants' business is affiliated with, connected with,
23 associated with, sponsored by, endorsed by, administered by, supervised by, or
24 otherwise connected with Plaintiffs.

25 185. Upon information and belief, Defendants were, or should have been,
26 aware of Plaintiffs' use of and corresponding rights in the Pokéworks Marks and the
27 actions of Defendants were undertaken with an intentional, willful, or malicious
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1 intent to trade upon the goodwill associated with and the distinctiveness, strength,
2 and value of Plaintiffs' Pokéworks Marks.

3 186. Upon information and belief, Defendants' aforesaid acts in violation of
4 California common law have caused and will continue to cause damage and
5 irreparable harm to Plaintiffs, and are likely to continue unabated, thereby causing
6 further damage and irreparable harm to Plaintiffs and to the goodwill and business
7 reputation symbolized by and associated with their valuable Pokéworks Marks,
8 unless preliminarily and permanently enjoined and restrained by the Court.

9 187. Plaintiffs have no adequate remedy at law for Defendants' continuing
10 violation of Plaintiffs' rights and Plaintiffs will suffer irreparable injury in an
11 amount that cannot be ascertained at this time if Defendants are allowed to continue
12 to wrongfully use Plaintiffs' valuable Pokéworks Marks, and/or any confusingly
13 similar variations thereof.

14 188. By reason of the foregoing, Plaintiffs are entitled to preliminary and
15 permanent injunctive relief against Defendants, and anyone acting in concert with
16 Defendants, to restrain further acts of infringement of Plaintiffs' rights and, after
17 trial, to recover any damages proven to have been caused by reason of Defendants
18 aforesaid acts of infringement, Defendants profits, costs of corrective advertising,
19 any enhanced damages justified by the willful and intentional nature of such acts,
20 and other damages according to proof at trial, including costs and attorneys' fees.

21 **NINTH CLAIM FOR RELIEF**

22 **(Common Law Unfair Competition)**

23 *Against All Defendants*

24 189. Plaintiffs re-allege and incorporate by reference the allegations
25 contained in paragraphs 1 through 188 of this Complaint, as though fully set forth
26 herein.

27 190. Defendants unlicensed, unconsented to, and otherwise unauthorized use
28 of the Pokéworks Marks and/or confusingly similar variations thereof on or in

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1 connection with marketing, advertising, promoting, offering for sale, and selling its
2 similar products and/or services after their repudiation of the Franchise Agreements
3 constitutes a false designation of origin that wrongly suggests to the trade, relevant
4 purchasing public and consumers that such products and/or services emanate from,
5 or are licensed, endorsed, approved, or sponsored by, or are in some other way
6 associated or connected with Plaintiffs.

7 191. The above-described conduct of Defendants constitutes a false
8 description or representation tending to suggest to consumers and the relevant
9 purchasing public that Plaintiffs are the source of origin of such products and/or
10 services.

11 192. Upon information and belief, the above-described conduct of
12 Defendants has caused and is likely to continue to cause the trade, consumers and
13 the relevant purchasing public to be confused, deceived and mistaken as to the
14 source of origin of the products and/or services being offered and sold by
15 Defendants, and, further, to confuse, mislead, and deceive such persons into
16 wrongly believing that Defendants' business is affiliated with, connected with,
17 associated with, sponsored by, endorsed by, administered by, supervised by, or
18 otherwise connected with Plaintiffs.

19 193. Upon information and belief, Defendants have intentionally traded and
20 infringed upon Plaintiffs' Pokéworks Marks and misrepresented the source of origin
21 of their products and/or services.

22 194. By virtue of Defendants' acts described above, Defendants have
23 committed and are continuing to commit acts of unfair competition and false
24 designation of origin under California common law.

25 195. Upon information and belief, Defendants' aforesaid acts of unfair
26 competition and false designation of origin have caused and will continue to cause
27 damage and irreparable harm to Plaintiffs, and are likely to continue unabated,
28 thereby causing further damage and irreparable harm to Plaintiffs and to the

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1 goodwill and business reputation symbolized by and associated with their valuable
2 Pokéworks Marks, unless preliminarily and permanently enjoined and restrained by
3 the Court.

4 196. Plaintiffs have no adequate remedy at law for Defendants' continuing
5 violation of Plaintiffs' rights and Plaintiffs will suffer irreparable injury in an
6 amount that cannot be ascertained at this time if Defendants are allowed to continue
7 to wrongfully use Plaintiffs' valuable Pokéworks Marks, and/or any confusingly
8 similar variations thereof.

9 197. By reason of the foregoing, Plaintiffs are entitled to preliminary and
10 permanent injunctive relief against Defendants, and anyone acting in concert with
11 Defendants, to restrain further acts of unfair competition and false designation of
12 origin and, after trial, to recover any damages proven to have been caused by reason
13 of Defendants' aforesaid acts of unfair competition and false designation of origin,
14 Defendants' profits, costs of corrective advertising, any enhanced damages justified
15 by the willful and intentional nature of such acts, and other damages according to
16 proof at trial, including costs and attorneys' fees.

17 **TENTH CLAIM FOR RELIEF**

18 **(Unfair Competition in Violation of California**
19 **Business & Professions Code §§ 17200, *et seq.*)**

20 *Against All Defendants*

21 198. Plaintiffs re-allege and incorporate by reference the allegations
22 contained in paragraphs 1 through 197 of this Complaint, as though fully set forth
23 herein.

24 199. The acts of Defendants alleged herein constitute unlawful, unfair and
25 fraudulent business acts or practices as defined by California Business &
26 Professions Code §§ 17200, *et seq.*

27 200. Plaintiffs have valid and protectable rights in the Pokéworks Marks.

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1 201. Defendants’ unlicensed, unconsented to, and otherwise unauthorized
2 use of the Pokéworks Marks and/or confusingly similar variations thereof on or in
3 connection with marketing, distributing, advertising, promoting, offering for sale,
4 and selling Defendants’ similar products and/or services constitutes trademark
5 infringement under Section 32 of the Lanham Act, 15 U.S.C. § 1114(1)(a), and
6 unfair competition and false designation of origin under Section 43(a) of the
7 Lanham Act, 15 U.S.C. § 1125(a), and, therefore, is an “unlawful” business act or
8 practice in violation of California Business & Professions Code §§ 17200, *et seq.*

9 202. The above-described acts and practices by Defendants and their
10 continuing willful and concerted effort to trade on Plaintiffs’ goodwill constitute
11 “unfair” business acts or practices in violation of California Business & Professions
12 Code §§ 17200, *et seq.*

13 203. The above-described acts and practices by Defendants, on information
14 and belief, have caused and are likely to continue to cause the general public, trade,
15 consumers, and the relevant purchasing public to be confused, misled and deceived
16 as to the source of origin of Defendants’ goods and/or services, and, further, to
17 confuse, mislead, and deceive such persons into wrongly believing that Defendants’
18 business is affiliated with, connected with, associated with, sponsored by, endorsed
19 by, administered by, supervised by, or otherwise connected with Plaintiffs. Thus,
20 above-described acts and practices by Defendants are also likely to mislead or
21 deceive the general public and, therefore, constitute “fraudulent” business acts or
22 practices and/or unfair, deceptive, untrue or misleading advertising in violation of
23 California Business & Professions Code §§ 17200, *et seq.*

24 204. As a direct and proximate result of Defendants’ aforesaid acts and
25 practices in violation of California Business & Professions Code § 17200, Plaintiffs
26 have suffered injury in fact and have lost money and profits, and such damage and
27 irreparable harm to Plaintiffs and to the goodwill and business reputation
28 symbolized by and associated with their valuable Pokéworks Marks will continue

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1 unabated unless and until Defendants' acts are preliminarily and permanently
2 enjoined and restrained by the Court.

3 205. Plaintiffs have no adequate remedy at law for Defendants' continuing
4 violation of Plaintiffs' rights and Plaintiffs will suffer irreparable injury in an
5 amount that cannot be ascertained at this time if Defendants are allowed to continue
6 to wrongfully use Plaintiffs' valuable Pokéworks Marks, and/or any confusingly
7 similar variations thereof.

8 206. Further, the above-described unlawful, unfair, and fraudulent business
9 acts and practices of Defendants present a continuing threat to, and are meant to
10 deceive members of the public in that Defendants continue to promote their
11 restaurants by wrongfully trading on the goodwill of the Pokéworks Marks.

12 207. Accordingly, Plaintiffs are entitled to injunctive relief pursuant to
13 California Business & Professions Code § 17203.

14 **V. Prayer for Relief**

15 WHEREFORE, Plaintiffs prays for judgment against Defendants and in favor of
16 Plaintiffs, as follows:

17 1. For general, compensatory, liquidated, incidental, and consequential
18 damages, according to proof;

19 2. For interest on all sums due at the maximum rate allowed by law;

20 3. For entry of a preliminary and permanent injunction enjoining
21 Defendants, and all others acting in concert with Defendants, and their successors
22 and assigns, from:

23 a. using any reproduction, counterfeit, copy, or colorable imitation
24 of the Pokéworks Marks to identify any goods or the rendering of any services not
25 authorized by Plaintiffs;

26 b. engaging in any course of conduct likely to cause confusion,
27 deception or mistake, or injure Plaintiffs' business reputation or weaken the
28 distinctive quality of the Pokéworks Marks, Plaintiffs' name, reputation or goodwill;

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1 c. further infringing the Pokéworks Marks by distributing,
2 circulating, selling, marketing, offering for sale, advertising, promoting, displaying
3 or otherwise disposing of any products or services not authorized by Plaintiffs
4 bearing any simulation, reproduction, counterfeit, copy or colorable imitation of the
5 Pokéworks Marks;

6 d. using any simulation, reproduction, counterfeit, copy or
7 colorable imitation of the Pokéworks Marks in connection with the promotion,
8 advertisement, display, sale, offering for sale, circulation or distribution of any
9 unauthorized products or services in such fashion as to relate or connect, or tend to
10 relate or connect, such products in any way to Plaintiffs, or to any goods sold,
11 manufactured, sponsored or approved by, or connected with Plaintiffs;

12 e. making any statement or representation whatsoever, or using any
13 false designation of origin or false description, or performing any act, which can or
14 is likely to lead the trade or public, or individual members thereof, to believe that
15 any services provided, or any products manufactured, distributed, sold or offered for
16 sale, by Defendants are in any way associated or connected with Plaintiffs, or is
17 provided, sold, manufactured, licensed, sponsored, approved or authorized by
18 Plaintiffs;

19 f. engaging in any conduct constituting an infringement of any of
20 the Pokéworks Marks, of Plaintiffs' rights in, or to use or to exploit, said
21 trademarks, or constituting any weakening of Plaintiffs' name, reputation or
22 goodwill;

23 g. secreting, destroying, altering, removing, or otherwise dealing
24 with any books or records which contain any information relating to the distributing,
25 circulating, selling, marketing, offering for sale, advertising, promoting, or
26 displaying of all unauthorized products or services which infringe the Pokéworks
27 Marks; and

28 h. effecting assignments or transfers, forming new entities or

1 associations or utilizing any other device for the purpose of circumventing or
2 otherwise avoiding the prohibitions set forth in subparagraphs (a) through (g);

3 4. An order directing Defendants to file with this Court and serve on
4 Plaintiffs' counsel within 30 days after service of an injunction, a report under oath
5 setting forth in detail the manner and form in which Defendants have complied with
6 the injunction, pursuant to 15 U.S.C. § 1116(a);

7 5. For an award of Plaintiffs' reasonable attorneys' fees and costs of suit;
8 and

9 6. For such other and further relief as the Court deems just and proper.

10 Dated: April 18, 2022

Respectfully submitted,

11 **BRYAN CAVE LEIGHTON PAISNER**
12 **LLP**

13 By: /s/ Keith D. Klein

14 Keith D. Klein

15 Attorneys for Plaintiffs

16 BEYOND FRANCHISE GROUP, LLC and
17 BEYOND RESTAURANT GROUP, LLC
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